

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

MAY - 8 2012

PATRICIA PRESLEY, COURT CLERK

by DEPUTY

GILBERTA S. NORRIS, Derivatively on Behalf  
of Nominal Defendant CHESAPEAKE ENERGY  
CORPORATION,

Plaintiff,

vs.

AUBREY K. McCLENDON; RICHARD K.  
DAVIDSON; KATHLEEN M. EISBRENNER; V.  
BURNS HARGIS; FRANCIS A. KEATING;  
BRENE M. KERR; CHARLES T. MAXWELL;  
MERRILL A. MILLER, JR.; DONALD L.  
NICKLES; LOUIS A. SIMPSON; and  
FREDERICK B. WHITEMORE,

Defendants,

CHESAPEAKE ENERGY CORPORATION,

Nominal Defendant.

Case No.

**CJ -2012-2751**

**VERIFIED SHAREHOLDER DERIVATIVE PETITION FOR BREACH OF  
FIDUCIARY DUTIES, WASTE AND UNJUST ENRICHMENT**

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Petitioner Gilberta S. Norris (“Plaintiff”), by her undersigned attorneys, brings this action pursuant to 12 Okla. Stat. § 2023.1 for the benefit of Nominal Defendant Chesapeake Energy Corporation (“Chesapeake” or the “Company”) and Chesapeake’s shareholders, and makes the following allegations in support of Plaintiff’s derivative claims against the Defendants.

### **SUMMARY OF THE ACTION**

1. Plaintiff brings this shareholder derivative action in order to recover millions of dollars that were wasted by Chesapeake’s executive officers and board of directors (the “Board”) on personal flights made using the Company’s corporate jets (the “Aircraft”), and that the Board hid from Chesapeake’s shareholders.

2. For years, Chesapeake’s Board has told shareholders that the Company operates “several” corporate aircraft in which the Company owns “fractional interests” through a program operated by NetJets Inc. (“NetJets”). Chesapeake’s Board has further advised shareholders that not only are the Company’s executive officers allowed to use the Aircraft for business purposes, they are also permitted to fly these planes for personal reasons completely unrelated to business. This perk is permitted because, purportedly, “[f]eedback from our executive officers indicates that access to fractionally-owned company aircraft for personal use greatly enhances productivity and work-life balance which we believe may impact their willingness to work to or beyond normal retirement age.” Thus, between 2007 and 2011, according to the Company’s proxy statements, certain executive officers – the “named executive officers”<sup>1</sup> – racked up bills for personal travel on the Aircraft amounting to \$9,683,155.

3. Unlike the vast majority of publicly-listed companies, Chesapeake also allows its *directors* to make personal flights using the Company’s Aircraft. According to the Company’s

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<sup>1</sup> Under SEC Regulation S-K, item 402(a)(3), the “named executive officers” are a company’s principal executive officer, the principal financial officer and the three most highly-paid executive officers apart from the principal executive officer and financial officer, during the last financial year.

proxy statements, “each non-employee director is entitled to personal use of fractionally-owned company aircraft seating eight passengers or fewer for up to 40 hours of flight time per calendar year in North America, the Caribbean and Mexico.” Thus, between 2007 and 2011, Chesapeake’s non-employee directors racked up personal travel bills that cost shareholders a further \$4,215,531. In total, over the five year period, Chesapeake’s directors and officers used the Company’s Aircraft to make personal flights that cost shareholders **at least \$13,898,686**.

4. To justify such an extravagant perk, Chesapeake’s Board has, year after year, assured shareholders that, even though these personal flights have totaled millions of dollars, the Company’s Aircraft are nevertheless used “primarily for business purposes”, and that personal use is “limited.” Furthermore, because the Company’s Aircraft are purportedly used “primarily for business purposes”, Chesapeake’s shareholders have been told that, in calculating the cost of the personal use of the Aircraft, the Company only includes the variable costs of the flights, and not any fixed costs. Thus, for years, shareholders have been kept in the dark as to the size of these fixed costs, and the true, aggregate cost of Chesapeake’s Aircraft.

5. On March 28, 2012, in response to a demand by Plaintiff to inspect the Company’s books and records, Chesapeake produced internal company documents that revealed the true extent and the true cost of personal travel on the Company’s Aircraft. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. Given that personal use comprised such a high proportion of total use, the Board never had any basis for withholding from shareholders the large fixed costs of the Aircraft. If the fixed costs had been included – [REDACTED]

[REDACTED] – the true costs of personal use of the Aircraft would have increased by close to an estimated *\$10 million a year*.

7. These amounts were, and are, undoubtedly material to Chesapeake's shareholders and are costs that should be borne by the responsible individuals and not the Company. More importantly, the United States Securities and Exchange Commission ("SEC") has made clear that these amounts are material, mandating full disclosure. Under widely publicized changes made at the end of 2006, the SEC introduced rules that require any perquisite that exceeds \$10,000 to be separately identified in a company's proxy statement. The SEC based this \$10,000 threshold on its determination that "the \$10,000 threshold balances our desire to avoid disclosure of clearly de minimis matters against the interests of investors in the nature of items comprising compensation." SEC Adopting Release No. 33-8732A, at 71. In addition, if the value of a specific perquisite exceeds the greater of \$25,000 or ten percent of total perquisites, the value of the specific perquisite has to be disclosed.

8. By providing this guidance, the SEC sought to curb, if not eliminate, executives' abuse of company, and hence shareholder, assets. The SEC left no ambiguity as to what it believed to be material for purposes of disclosure to shareholders. In Chesapeake's case, the Board failed to comply with the relevant SEC guidelines. Instead, after falsely characterizing the extent of personal Aircraft use at Chesapeake, the Board proceeded to use this false factual predicate to omit disclosure of millions of dollars of additional fixed costs per year.

9. In this manner, the Board breached its fiduciary duty of loyalty to Chesapeake's shareholders. The Board breached its duty of loyalty by misleading Chesapeake's shareholders as to the true extent of personal use of the Aircraft, and as to the true cost of this use. Further, the Board and its Compensation Committee committed corporate waste by adopting a policy that permits such extravagant personal use of the Aircraft, and by approving extensive personal use by the Company's executive officers and directors.

10. How a Board which was supposedly charged with protecting shareholders' interests ended up working to undermine those interests can only be explained by the crippling conflicts of interest that afflicted and continue to afflict the members of the Board. For example, although the Board and its Compensation Committee are charged with prudently determining the amount of remuneration to be paid to the Company's executive officers and directors, including perks such as personal use of the Aircraft, in this instance the Board and the Compensation Committee indulged in the very same perk that they are required to police. Every year, the directors on the Board awarded themselves 40 hours of personal use of the Aircraft.

11. Moreover, although the majority of the directors on the Board are purportedly "non-employees" and thus are supposed to conduct themselves independently of management, all the directors are so richly compensated by the Company that they are effectively employees, fatally compromising their independence and ability to protect shareholders' interests. In 2011, for example, the seven non-employee directors who served on the Board for the full year each earned compensation ranging from \$467,026 (director Charles T. Maxwell) to \$620,438 (director Richard K. Davidson). These are extraordinary amounts of compensation for directors who serve merely on a part time basis. (In 2011, the Board met only *four* times.)

12. Unsurprisingly, Chesapeake's Board and corporate governance standards have been universally criticized. In fact, on April 26, 2012, credit rating agency Standard & Poor's downgraded Chesapeake's corporate credit and senior unsecured debt from BB+ to BB, citing the potential fallout from "shortcomings in the [C]ompany's existing corporate governance practices." Furthermore, nearly all analysts lambaste Chesapeake's Board for their abdication of oversight and failures in governance. One commentator has stated that "[t]here are too many ghosts and skeletons in the closet" and that the Board "have their fingerprints on this problem [governance failings] as well." George Gutowski, *Chesapeake: Value Investor Considerations*, THE MOTLEY FOOL (May 3, 2012). Another commentator has noted the "pattern of poor corporate governance" at Chesapeake. Matt Orsagh, *Chesapeake Energy: Investors Fume Over Pattern Of Poor Corporate Governance*, SEEKING ALPHA (May 6, 2012).

13. Defendants' conduct is especially reprehensible in light of the Company's financial performance and current financial predicament. Since July 2008, Chesapeake's stock price has plummeted by over 70%. More immediately, the Company faces a crippling "funding gap" of over \$9 billion, as a result of its cash flow being insufficient to meet the Company's capital expenditures and debt payments. Consequently, over the last 12 months, the Company has had to fill the funding gap by conducting a fire sale of some of its best assets at a time when the value of those assets are depressed as a result of decade-low natural gas prices. Under these circumstances, nothing could be more financially imprudent than to continue the Company's and Board's extravagant and wasteful policy regarding personal use of the Aircraft.

14. For the reasons set forth in greater detail below, the Company has suffered losses of millions of dollars and Plaintiff requests that the Court award damages, disgorgement and other relief against Defendants.



### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over all causes of action asserted herein pursuant to the Oklahoma Constitution, Article VII, § 7, because this case is a cause not given by statute to other trial courts; Title 12, § 2004 of the Oklahoma Code of Civil Procedure; and Title 18, § 2059 of the Oklahoma Corporations Code.

16. This Court has jurisdiction over each Defendant named herein because each Defendant is either a corporation that does sufficient business in Oklahoma, or an individual who has sufficient minimum contacts with Oklahoma, to render the exercise of jurisdiction by the Oklahoma courts permissible under traditional notions of fair play and substantial justice. All of the Defendants conduct business and/or maintain offices in Oklahoma, and Chesapeake's headquarters is located at 6100 North Western Avenue, Oklahoma City, Oklahoma. Also, Defendants reside in Oklahoma.

17. Venue is proper in this Court because a substantial portion of the wrongs complained of herein, including the Defendants' primary participation in the wrongful acts in violation of their fiduciary duties, occurred in this County, and the Defendants have received substantial compensation in this County by doing business here and engaging in numerous activities which had an effect in this County. Venue is also proper in this Court because many of those affected by Defendants' conduct reside in this County, and many of the potential witnesses reside or work in this County.

### **PARTIES**

18. Plaintiff Norris is an individual residing in the State of Virginia. Plaintiff Norris has continuously held shares of Chesapeake common stock since October 14, 2008, and was a shareholder at the time of the events alleged in this action.

19. Nominal Defendant Chesapeake is an Oklahoma corporation with its principal place of business located at 6100 North Western Avenue, Oklahoma City, Oklahoma 73118. Chesapeake's business is the exploration for and production of natural gas.

20. Defendant Aubrey Kerr McClendon ("McClendon") is the CEO and, until recently, Chairman of the Board of Chesapeake. On May 1, 2012, it was reported that, due to revelations of certain conflicts of interest with respect to his own personal investments, McClendon was to be stripped of his position as Chairman. Defendant McClendon has been a director and CEO of Chesapeake since co-founding the Company in 1989.

21. Defendant Richard K. Davidson ("Davidson") has been a director, and a member of the Board's Audit Committee, since March 2006. Davidson was also a member of the Board's Nominating and Corporate Governance Committee from 2006 until December 2008.

22. Defendant Kathleen M. Eisbrenner ("Eisbrenner") has been a director and a member of the Board's Compensation Committee since December 2010.

23. Defendant V. Burns Hargis ("Hargis") has been a director, and a member of the Audit Committee, since September 2008.

24. Defendant Frank Keating ("Keating") has been a director since June 2003, and a member of the Board's Compensation Committee since 2003. Defendant Keating is currently the chairman of the Compensation Committee.

25. Defendant Breene M. Kerr ("Kerr") was a director from 1993 until his retirement at Chesapeake's June 12, 2009 annual shareholders' meeting. Kerr is McClendon's cousin and was the highest paid director in 2008, receiving \$784,687 in compensation, according to the Company's 2009 proxy statement. Until his retirement, Kerr was the Chairman of the Board's

Audit Committee. According to the Company's 2009 proxy statement, Kerr subsequently assumed the role of "informally advis[ing] the Company as a Director Emeritus."

26. Defendant Charles T. Maxwell ("Maxwell") has been a director since 2002, and has been on the Board's Compensation Committee since 2006.

27. Defendant Merrill A. "Pete" Miller, Jr. ("Miller") has been a director, and a member of the Board's Audit Committee, since January 2007.

28. Defendant Donald L. Nickles ("Nickles") has been a director since January 2005. He has also been a member of the Nominating and Corporate Governance Committee.

29. Defendant Louis A. Simpson has been a director since June 10, 2011 and is also currently a member of the Board's Nominating and Corporate Governance Committee.

30. Defendant Frederick B. Whittemore ("Whittemore") was a Chesapeake director from 1993 until his retirement at Chesapeake's June 10, 2011 annual shareholders' meeting. From at least 1996 until his retirement, Whittemore was a member of the Board's Compensation Committee. He was also a member of the Nominating and Corporate Governance Committee from at least 2005.

31. Defendants McClendon, Davidson, Eisbrenner, Hargis, Keating, Kerr, Maxwell, Miller, Nickles, Simpson and Whittemore are hereinafter collectively referred to as the "Director Defendants."

32. Defendants Eisbrenner, Keating, Maxwell and Whittemore are also hereinafter collectively referred to as the "Compensation Committee Defendants."

33. By virtue of their positions as directors and/or officers of Chesapeake and/or members of the Compensation Committee, and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all

relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each Director Defendant owed and owes Chesapeake and its shareholders fiduciary obligations of candor, good faith and loyalty and were and are required to: (1) use her/his ability to control and manage Chesapeake in a fair, just, and equitable manner; (2) act in furtherance of the best interests of Chesapeake and its shareholders; (3) act to maximize shareholder value in connection with any contract or agreement to the extent consistent with governing statutes; (4) govern Chesapeake in such a manner as to heed the expressed views of its public shareholders; (5) refrain from abusing her/his position of control; and (6) not favor her/his personal interests, or any third party's interests, at the expense of the Company and its public shareholders.

34. Each Defendant named herein is sued individually, and as an aider and abettor, in her/his capacity as a director of Chesapeake. In addition, Defendant McClendon is sued in his capacity as an officer of Chesapeake.

### **SUBSTANTIVE ALLEGATIONS**

#### **I. CHESAPEAKE'S FRACTIONAL OWNERSHIP INTERESTS IN CORPORATE JETS**

35. Chesapeake owns "fractional interests" in certain Aircraft through a fractional ownership program operated by NetJets.

36. Fractional ownership is a form of private jet ownership program that is offered as an alternative to full ownership of an airplane. A fractional ownership program allows a purchaser to tailor its ownership of a corporate jet to that purchaser's business and/or personal transportation requirements. Under a fractional aircraft ownership program, the purchaser purchases an interest in a specific, serial-numbered aircraft that is registered with the Federal Aviation Administration. The purchaser's interest is an undivided lien-free interest in the

specific aircraft, and the owner of the fractional interest occupies a similar position to that of a tenant-in-common in real estate ownership.

37. By purchasing a fractional interest in a specific aircraft, the purchaser acquires a “bank” of hours to be utilized on that aircraft over the term of the fractional ownership (usually five years). With NetJets’ program, the smallest fractional interest is a 1/16<sup>th</sup> share, which comes with 50 hours of flying time per year. Thus, over a five year term, the owner of a 1/16<sup>th</sup> fractional interest would be able to fly the plane for a total of 250 hours.

38. A fractional aircraft ownership is not the same as a time-sharing program, under which the time-share owner does not have access to the particular aircraft if another owner is using it. Instead, a fractional aircraft ownership program guarantees availability, typically with as little as several hours’ notice, depending on the aircraft type and the size of the fractional interest purchased. The best fractional aircraft ownership programs unconditionally guarantee that, when the fractional owner calls for the owner’s plane, either that plane or a comparable or larger aircraft will be dispatched.

39. Once a purchaser acquires a fractional interest in a plane, the fractional aircraft company manages the purchaser’s interest and provides all flight crew management, trip scheduling, ground support, catering, ground transportation, and required maintenance.

40. There are several significant costs associated with the privileges and flexibility offered by a fractional ownership program.

41. First, there is a one-time acquisition cost to purchase the fractional interest. Under NetJets’ program, the cost to acquire a 1/16<sup>th</sup> fractional interest (50 hours’ flying time per year) starts at approximately \$200,000 (for a “light-cabin” aircraft) and goes as high as approximately \$2,000,000 (for a “large-cabin” aircraft).

42. Second, the fractional owner pays a fixed, monthly management fee that represents the fractional owner's share of the ongoing fixed costs of the aircraft, such as pilot salaries, training, hangar costs, general maintenance expenses, insurance, administration and owner support services.

43. Third, the fractional owner must pay an "occupied hourly fee" that covers flight-specific, direct operating costs associated with using the specific airplane. These direct operating costs include fuel, trip-related maintenance, catering, landing fees and trip-related parking and hangar costs. In addition, there may be fuel surcharges, international fees for travel outside the United States, and taxes and insurance.

## **II. CHESAPEAKE'S DISCLOSURES TO SHAREHOLDERS CONCERNING ITS AIRCRAFT**

44. As set forth below, since 2007, Chesapeake and the Director Defendants have continually and repeatedly misled the Company's shareholders concerning several aspects of the Aircraft, specifically, the number of Aircraft in which the Company owns fractional interests; the amount of non-business, personal use of the Aircraft; and the true costs of this personal use.

### **A. 2007 Fiscal Year**

45. According to Chesapeake's proxy statement, filed on April 29, 2008 (the "2008 Proxy"), the Company "owns fractional interests in *several* aircraft through the NetJets (a Berkshire Hathaway company) program." (emphasis added). In the 2008 Proxy, Chesapeake stated that "we provide exclusively to our chief executive officer, executive vice presidents and senior vice presidents ... personal use of fractionally-owned company aircraft." Chesapeake's justification for such a policy is that, "[f]eedback from our executive officers indicates that access to fractionally-owned company aircraft for personal use greatly enhances productivity and

work-life balance which we believe may impact their willingness to work to or beyond normal retirement age.”

46. Unlike the vast majority of publicly-listed companies, Chesapeake not only allows its *executives* to use the Company’s Aircraft for personal purposes, but also its *directors*. Thus, in the 2008 Proxy, the Company stated that “each non-employee director is entitled to personal use of fractionally-owned company aircraft seating eight passengers or fewer for up to 40 hours of flight time per calendar year in North America, the Caribbean and Mexico.”

47. The cost of all of this personal use is significant. According to the 2008 Proxy, for the 2007 fiscal year, Chesapeake’s named executive officers incurred **\$2,019,223** in costs for personal use of the Company’s Aircraft, and Chesapeake’s directors incurred a further **\$607,602** in costs for personal use of the Company’s Aircraft. In total, for the 2007 fiscal year, Chesapeake’s named executive officers and directors made personal flights on the Aircraft that cost the Company’s shareholders **\$2,626,825**.

48. To reassure shareholders, Chesapeake and the Director Defendants stated that the Company’s “fractionally-owned company aircraft are used primarily for business travel.” Because the primary use was purportedly business, the 2008 Proxy stated further that, in calculating the cost of personal travel for its named executive officers and directors, the Company did “not include the fixed costs that do not change based on the usage, such as purchase costs and maintenance costs not related to trips.”

#### **B. 2008 Fiscal Year**

49. Chesapeake repeated the above statements in its proxy statement, filed on April 30, 2009 (the “2009 Proxy”). In the 2009 Proxy, Chesapeake and the Director Defendants stated that the Company owned “fractional interests in several aircraft through the NetJets (a Berkshire

Hathaway company) program”, and that it provided “exclusively to [its] chief executive officer, executive vice presidents and senior vice presidents ... personal use of fractionally-owned company aircraft” because “[f]eedback from our executive officers indicates that access to fractionally-owned company aircraft for personal use greatly enhances productivity and work-life balance which we believe may impact their willingness to work to or beyond normal retirement age.” In addition, the 2009 Proxy stated that “each non-employee director is entitled to personal use of fractionally-owned company aircraft seating eight passengers or fewer for up to 40 hours of flight time per calendar year in North America, the Caribbean and Mexico.”

50. According to the 2009 Proxy, for the 2008 fiscal year, Chesapeake’s named executive officers incurred **\$2,186,099** in personal use of the Aircraft, and its directors incurred **\$869,688** in personal use, for a total of **\$3,055,787**.

51. Again, the Company and the Director Defendants assured shareholders that “the fractionally-owned company aircraft are used primarily for business travel.” For that reason, the Company did not include in the cost of personal travel any of the “fixed costs that do not change based on the usage, such as purchase costs and maintenance costs not related to trips.”

### **C. 2009 Fiscal Year**

52. Chesapeake issued the same statements in its proxy statement, filed on April 30, 2010 (“2010 Proxy”). In the 2010 Proxy, Chesapeake and the Director Defendants stated that the Company owned “fractional interests in several aircraft through the NetJets (a Berkshire Hathaway company) program”, and that it provided “exclusively to [its] chief executive officer, executive vice presidents and senior vice presidents ... personal use of fractionally-owned company aircraft”, purportedly because “[f]eedback from our executive officers indicates that access to fractionally-owned company aircraft for personal use greatly enhances productivity and



work-life balance which we believe may impact their willingness to work to or beyond normal retirement age.” In addition, “each non-employee director is entitled to personal use of fractionally-owned company aircraft seating eight passengers or fewer for up to 40 hours of flight time per calendar year in North America, the Caribbean and Mexico.”

53. According to the 2010 Proxy, for the 2009 fiscal year, Chesapeake’s named executive officers incurred **\$1,692,432** in personal flights on the Company’s Aircraft, while its directors incurred **\$816,805** in personal flights, for a total of **\$2,509,237**.

54. Again, Chesapeake and the Director Defendants assured the Company’s shareholders that the “fractionally-owned company aircraft are used primarily for business travel.” For that reason, in calculating the cost of personal travel, the Company did “not include the fixed costs that do not change based on the usage, such as purchase costs and maintenance costs not related to trips.”

#### **D. 2010 Fiscal Year**

55. Chesapeake made similar statements as in prior years in its proxy statement, filed on April 29, 2011 (the “2011 Proxy”). In the 2011 Proxy, Chesapeake and the Director Defendants stated that the Company “own[ed] fractional interests in several aircraft through the NetJets program” and that it provided “exclusively to [its] NEOs [named executive officers] and other senior vice presidents ... personal use of fractionally-owned company aircraft.” Chesapeake and the Director Defendants justified this policy on the ground that “[f]eedback from the NEOs indicates that *limited* access to fractionally-owned Company aircraft for personal use greatly enhances productivity and work-life balance, which we believe provides performance and retention incentives far in excess of the cost of the perquisite to the Company.” (emphasis added). Chesapeake and the Director Defendants therefore implied that personal use by the

Company's executive officers was "limited." In addition, the 2011 Proxy stated that "each non-employee director is entitled to personal use of fractionally-owned Company aircraft for up to 40 hours of flight time per calendar year."

56. According to the 2011 Proxy, for the 2010 fiscal year, Chesapeake's named executive officers incurred **\$1,986,146** in personal flights using the Company's Aircraft, while its directors incurred an additional **\$827,103**, for a total of **\$2,813,249** in personal flights.

57. Again, Chesapeake and the Director Defendants assured shareholders that the "fractionally-owned Company aircraft are used primarily for business travel." Therefore, in calculating the cost of the personal flights, the Company did "not include the fixed costs that do not change based on the usage, such as purchase costs and maintenance costs not related to trips."

#### **E. 2011 Fiscal Year**

58. On April 20, 2012, Chesapeake filed a preliminary proxy statement (the "2012 Proxy"). Like the prior proxy statements, the 2012 Proxy stated that Chesapeake "own[ed] fractional interests in several aircraft through the NetJets program" and that it "provided exclusively to our named executive officers and other senior vice presidents personal use of fractionally-owned company aircraft." Chesapeake and the Director Defendants again justified this policy on the ground that "[f]eedback from the named executive officers indicates that *limited* access to fractionally owned Company aircraft for personal use greatly enhances productivity and work-life balance, which we believe provides performance and retention incentives far in excess of the cost of the perquisite to the Company." (emphasis added). Elsewhere in the 2012 Proxy, Chesapeake explicitly characterized the personal use of the Aircraft as limited: "[T]he perquisites we provided in 2011 exclusively to our executive vice

presidents and senior vice presidents (but not our CEO) include ... *limited personal use* of fractionally owned Company aircraft.” (emphasis added). In addition, the 2012 Proxy stated that “each non-employee director is entitled to personal use of fractionally owned Company aircraft for up to 40 hours of flight time per calendar year.”

59. According to the 2012 Proxy, for the 2011 fiscal year, the Company’s named executive officers incurred **\$1,799,255** in personal flights using the Company’s Aircraft, while its directors incurred an additional **\$1,094,333**, for a total of **\$2,893,588** in personal flights.

60. As in prior proxy statements, Chesapeake and the Director Defendants assured shareholders that the “fractionally owned Company aircraft are used primarily for business travel.” Therefore, in calculating the cost of the personal flights, the Company did “not include the fixed costs that do not change based on the usage, such as purchase costs and maintenance costs not related to trips.”

61. Thus, Chesapeake and the Director Defendants disclosed that, between 2007 and 2011, Chesapeake’s Aircraft were used by the Company’s named executive officers, as well as directors, to conduct **personal flights** that cost the Company **\$2,626,825** (2007), **\$3,055,787** (2008), **\$2,509,237** (2009), **\$2,813,249** (2010) and **\$2,893,588** (2011), respectively, for a total of **\$13,898,686** over the five year period.

### **III. THE DIRECTOR DEFENDANTS BREACHED THEIR FIDUCIARY DUTY OF LOYALTY BY MISLEADING CHESAPEAKE’S SHAREHOLDERS CONCERNING THE TRUE EXTENT AND THE TRUE COST OF PERSONAL USE OF THE COMPANY’S AIRCRAFT**

#### **A. The Amount Of Personal Use Of Chesapeake’s Aircraft Is Higher Than The Amount Reported In The Company’s Proxy Statements, And Constitutes A Significant Proportion Of Total Aircraft Use.**

62. On February 13, 2012, Plaintiff served a demand on Chesapeake to inspect its books and records pursuant to 18 Okla. Stat. § 1065 and the common law of the State of

Oklahoma (the “Demand”). On March 28, 2012, in response to the Demand, Chesapeake made an initial, limited production of books and records concerning the use of its Aircraft. Even though Chesapeake’s response was limited and inadequate to satisfy its obligations in response to Plaintiff’s Demand, Chesapeake’s production contained various documents that revealed Chesapeake’s proxy statements to be false and misleading with respect to the true extent and the true cost of the personal use of Chesapeake’s Aircraft.

63. In the first place, Chesapeake’s proxy statements omit the significant amount of personal use of the Aircraft by executive officers other than the “named executive officers”, and by certain consultants. [REDACTED]

[REDACTED] Below is a table showing the number of hours of personal use allotted to Chesapeake’s named executive officers, all other executive officers/consultants employed by Chesapeake, and Chesapeake’s directors for the years 2010 and 2011 (information as to the number of hours allotted was not made available by the Company for prior years):

<b>Fiscal Year</b>	<b>No. Of Hours Allotted To CEO Aubrey McClendon</b>	<b>Total No. Of Hours Allotted To Named Executive Officers Other Than Aubrey McClendon</b>	<b>Total No. Of Hours Allotted To Executive Officers/Consultants (Apart From Named Executive Officers)</b>	<b>Total No. Of Hours Allotted To Non-Employee Directors</b>	<b>Total No. Of Hours Of Personal Use</b>
2010	Unlimited	373	[REDACTED]	320	[REDACTED]
2011	Unlimited	310	[REDACTED]	360	[REDACTED]

64. Because of this additional personal use by executive officers other than the named executive officers, the actual total cost of personal use of Chesapeake’s Aircraft is much higher

than the amounts reported in the proxy statements. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] This compared to the \$2,813,249 and \$2,893,588 reported in Chesapeake's proxy statements for 2010 and 2011 respectively – a discrepancy of [REDACTED] for just these two years alone.

65. Not only are the actual costs of personal use extremely large in absolute terms, they are large when compared to the total amount of business use. Every year, in each of the 2008 through 2012 Proxies, Chesapeake and the Director Defendants stated that the Company's Aircraft were "used primarily for business travel", and (in the 2011 and 2012 Proxies) that the amount of personal use was "limited." For that reason, shareholders were told, the Company did not allocate to personal flights a portion of the fixed costs associated with fractional ownership of the Aircraft.

66. Based on the Internal Company Spreadsheet, however, it is now clear that these statements were false and misleading. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**B. Because Personal Use Constitutes Such A Large Proportion Of Total Aircraft Use, Chesapeake Should Have Included A Portion Of The Fixed Costs Of The Aircraft When Calculating The Cost Of Personal Use.**

67. Given the extremely high proportion of personal use relative to business use, Chesapeake's justification for excluding fixed costs when calculating the cost of the personal flights – that personal use is “limited” and that the Aircraft are used “primarily for business purposes” – is utterly baseless and improper. Because personal use constituted a major proportion of total use of the Aircraft, Chesapeake's shareholders were entitled to know the full cost of the Aircraft.

68. In fact, of the different types of aircraft ownership, fractional ownership is one type of ownership where it is relatively straightforward to allocate the fixed costs between personal use versus business use. Under fractional ownership, when the purchaser acquires its interest in a specific aircraft, that interest comes with a “bank” of hours to be used over the term of the fractional ownership agreement. Thus, if a purchaser acquires a 1/16<sup>th</sup> interest in an aircraft along with a “bank” of 50 hours of flight time per year, and proceeds to spend 25 hours on business use and 25 hours on personal use in any given year, it is easy to see that the fixed costs associated with fractionally owning that airplane should be allocated evenly between the personal use and the business use in that particular year.

69. By failing to allocate the fixed costs of the Aircraft, Chesapeake has been able to exclude millions of dollars of fixed costs from the cost calculations for personal use of the Company's Aircraft. As previously described, these fixed costs include the initial upfront acquisition cost for the fractional interest, and a fixed monthly management fee. Both of these fixed costs are significant and, if taken into account, would greatly increase the true cost of personal use of Chesapeake's Aircraft.

70. Consider first of all the upfront acquisition cost. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

71. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

72. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Thus, if the full

cost of these upfront acquisition costs were taken into account, the cost of the personal flights would be *increased by several million dollars each year*.

73. Apart from the upfront acquisition costs, Chesapeake has failed to include the cost of the fixed monthly management fee. Like the acquisition costs of the Aircraft, the portion of the fixed monthly management fee that is attributable to personal use of the Aircraft can be easily calculated under a fractional ownership program. Under the NetJets program, a fixed monthly management fee is assessed to an owner based on the size of the owner's fractional interest, and the type of plane. For an owner of a 1/16<sup>th</sup> fractional interest (50 hours of annual use), the fixed management fee ranges from approximately \$12,000 per month for the light-cabin Cessna Citation Excel, to \$22,000 per month for the large-cabin Gulfstream Aerospace IV.

74. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75. Thus, when combined with the acquisition costs of the Aircraft, Chesapeake and the Director Defendants failed to disclose to shareholders additional costs associated with personal use of the Aircraft that amounted to millions of dollars each year.

76. These amounts were material to shareholders. In addition, these amounts were deemed material under new rules introduced by the SEC at the end of 2006. Under these rules, the SEC requires that any perks, such as personal aircraft use, be separately identified if it exceeds \$10,000 in value. In addition, if the value of the specific perk exceeds the greater of \$25,000 or 10% of total perks, a company must disclose the value of that perk. In introducing



these changes, the SEC explained, in its Adopting Release No. 33-8732A (the “Adopting Release”), that “we are adopting changes to the disclosure of perquisites and other personal benefits to improve disclosure and facilitate computing a total amount of compensation.” Further, the SEC stated that “we believe \$10,000 is a reasonable balance between investors’ need for disclosure of total compensation and the burden on a company to track every benefit, no matter how small.” By hiding the fixed costs of personal use of the Aircraft, Chesapeake’s Board failed to comply with these SEC requirements, and breached their fiduciary duty of loyalty to shareholders.

**C. The Actual Cost Of Personal Use Of The Aircraft Is Even Higher Because Chesapeake Has Under-Reported The Amount Of Personal Use By Chesapeake’s Directors.**

77. According to the 2011 Proxy, “directors are provided access to fractionally-owned Company aircraft for travel to and from Board meetings.” This access extends to the director’s spouse. Chesapeake does not characterize these flights by directors and their spouses as being part of each director’s allotment of 40 hours of personal flights each year. This is evidenced by the 2011 Proxy, which states that “[i]n addition [to the flights by directors and their spouses to and from board meetings and other company events], each non-employee director is entitled to personal use of fractionally-owned Company aircraft for up to 40 hours of flight time per calendar year.” (emphasis added). As set forth below, under applicable SEC guidelines, these flights by directors and their spouses to and from board meetings and other company events are properly to be classified as personal flights (perquisites), and not business flights.

78. When introducing its new rules at the end of 2006, the SEC avoided providing a bright line definition of what constitutes a “perquisite”, and instead set forth, in its Adopting

Release, a two-prong test for determining whether or not a benefit constitutes a perquisite. Under the first prong, an “item is not a perquisite or personal benefit if it is *integrally and directly related* to the performance of the executive’s duties.” (emphasis added). If an item is “integrally and directly related”, then that is the end of the analysis and the item in question is not a perquisite and no compensation disclosure is required. As the SEC proceeded to explain in the Adopting Release, however, the “concept of a benefit that is ‘integrally and directly related’ to job performance is a narrow one.” “The analysis draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit.”

79. If an item is not integrally and directly related to the performance of the executive’s duties, the second prong of the SEC’s test is triggered. Under this prong, an item will be deemed a perquisite if it “confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.”

80. In the Adopting Release, the SEC proceeded to apply its two-prong test to the specific example where a company provides an executive with helicopter service to commute to work from home. In that example, the SEC explained, the helicopter service is “*not* integrally and directly related to job performance (*although it would benefit the company by getting the executive to work faster*).” (emphasis added). In addition, under the second prong of the SEC’s test, the provision of the helicopter service for commuting from the executive’s home “clearly bestows a benefit that has a personal aspect”, and is not generally available to all employees on a

non-discriminatory basis. Accordingly, under the SEC's two-prong test, the helicopter commuting service would be considered a perquisite.

81. Based on the guidance set forth by the SEC in the Adopting Release, it is clear that providing flights for directors and their spouses to and from board meetings and other Company events constitutes a perquisite (personal use) which must be separately disclosed. By failing to include these flights as part of director perquisites, Chesapeake has consistently under-reported the extent and true cost of personal use of the Company's Aircraft by its directors. In fact, because Chesapeake has failed to comply with SEC Regulation S-K, there may be many other instances where the Company has incorrectly classified personal use as business use, costing shareholders even more.

#### **IV. IN CONTINUALLY APPROVING SUCH EXTRAVANGANT PERSONAL USE OF THE COMPANY'S AIRCRAFT, THE DIRECTOR DEFENDANTS HAVE COMMITTED CORPORATE WASTE**

82. The extent and cost of personal use of the Aircraft is especially astounding given the complete lack of benefit to the Company from advancing such a generous perk.

83. Year after year, the Director Defendants have justified awarding extravagant personal use of the Aircraft on the basis that "[f]eedback from the named executive officers indicates that limited access to fractionally owned Company aircraft for personal use greatly enhances productivity and work-life balance, which we believe provides performance and retention incentives far in excess of the cost of the perquisite to the Company." However, neither the Board nor its Compensation Committee cites any study or analysis for this bald proposition. This is despite the fact that the Compensation Committee is expressly authorized by, and has "sole authority" under, the Company's Charter to retain a compensation consultant

“to be used to evaluate director, CEO or executive officer compensation.” No such evaluation has ever been commissioned to examine the benefits of such generous personal use.

84. Thus, the Board and its Compensation Committee cannot explain why, in order to “enhance[] productivity”, it is essential for the Company’s CEO, Defendant McClendon, to conduct personal flights costing approximately \$1.15 million in 2011; the Company’s Chief Financial Officer, Domenic J. Dell’Osso, Jr., to incur another \$237,000 in personal travel on the Aircraft in the same year; or even the Company’s head of Human and Corporate Resources, Martha A. Burger, to incur another \$264,000 in personal travel. Rather than producing any benefit to the Company, the provision of such extravagant personal use of the Aircraft clearly injures the Company because it has, in fact, encouraged the Company’s executive officers to conduct more personal travel than they otherwise would, thereby taking these employees away from performing their jobs.

85. The approval of such extravagant personal use is especially egregious given Chesapeake’s current, dire financial situation. Since a high of approximately \$66 reached on July 2, 2008, Chesapeake’s stock trades at approximately \$17 today, a drop of over 70%. For the first quarter of 2012, Chesapeake reported a net loss to shareholders of \$71 million. Moreover, although the Company has repeatedly announced its intention to reduce debt, it *added \$2.56 billion* in debt in the first quarter alone, so that total debt now stands at \$13.1 billion.

86. With debt of more than \$13 billion, and declining prices for its major product, natural gas, Chesapeake faces an estimated 2012 funding gap of \$9.2 billion, representing the difference between the Company’s cash flow and its outlays on capital expenditures and debt payments. To plug this gap, Chesapeake has been forced to engage in a fire sale of some of its best assets, while the prices of these assets are at depressed levels. As reported by the *Wall*

*Street Journal*, Chesapeake plans to sell at least \$10 billion in assets this year, including the Company's lucrative oil and gas fields in the Permian Basin in West Texas and New Mexico. D. Gilbert, *Chesapeake Boosts Cash Goal*, WALL STREET JOURNAL (February 14, 2012). According to *Bloomberg Businessweek*, CEO McClendon plans to sell a total of \$17.5 billion in assets by the end of 2013 to meet the Company's projected funding gap. J. Carroll, *Chesapeake Energy Sells \$2.6 Billion Worth Of Assets*, BLOOMBERG BUSINESSWEEK (April 9, 2012).

87. Under these circumstances, it makes no sense to continue the Company's extravagant and irresponsible Aircraft personal use policy.

#### **DEMAND IS EXCUSED**

88. Plaintiff has not made a demand on the Chesapeake Board to institute this action in connection with the wrongs alleged in this Petition because such a demand would be futile, and is thereby excused. As alleged in greater detail below, the Director Defendants who presently comprise Chesapeake's Board lack the requisite disinterestedness and independence to determine fairly and impartially whether the claims alleged in this Petition should be pursued.

89. As of the date this Petition was filed, Chesapeake's current Board consisted of the following nine individuals, all of whom are named in this Petition as Director Defendants: McClendon, Davidson, Eisbrenner, Hargis, Keating, Maxwell, Miller, Nickles and Simpson. These nine Director Defendants suffer from irreconcilable conflicts of interest and cannot fairly and impartially consider a demand to assert the claims alleged in this action because: (1) the Director Defendants themselves used and continue to use the Aircraft for personal purposes, and personally benefited and continue to benefit from the under-reporting of the true costs of personal use of the Aircraft; (2) the Director Defendants face a substantial likelihood of personal liability because they breached their duty of loyalty by repeatedly misleading shareholders as to

the true extent and true cost of personal use of the Aircraft, and because they approved an Aircraft policy and extensive personal use of the Aircraft that amounted to corporate waste; (3) certain of the Director Defendants (Keating, Miller and Hargis) have business relationships with Chesapeake that render these Director Defendants incapable of impartially considering a claim that challenges a lucrative perk afforded to Chesapeake's executive officers; and (4) the Director Defendants have a strong personal interest in retaining their lucrative compensation as Board members, and are unlikely to challenge the status quo in any manner that could lead to their removal from the Board.

**I. THE DIRECTOR DEFENDANTS THEMSELVES USED THE AIRCRAFT FOR PERSONAL PURPOSES AND PERSONALLY BENEFITED FROM THE UNDER-REPORTING OF THE TRUE COST OF CHESAPEAKE'S AIRCRAFT POLICY**

90. There can be no question that each of the nine Director Defendants currently on the Board is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action.

91. Director Defendant McClendon, the Company's CEO, has unlimited use of the Company's Aircraft and directly benefited the most from the Company's Aircraft perk. Between 2007 and 2011, McClendon by himself incurred **\$2,695,041** in personal travel on Chesapeake's Aircraft that was paid for by Chesapeake's shareholders.

92. The other eight, non-employee Director Defendants currently on the Board are also entitled, under Chesapeake's Aircraft policy, to "personal use of fractionally-owned company aircraft seating eight passengers or fewer for up to 40 hours of flight time per calendar year in North America, the Caribbean and Mexico." Indeed, pursuant to this policy, Chesapeake's non-employee Director Defendants have freely availed themselves of this extravagant perk. Between 2007 and 2011, the non-employee Director Defendants conducted

personal travel on the Company's Aircraft that cost the Company's shareholders \$4,215,531. As alleged above, the actual amount is in fact greater, because the Company has failed to include travel to and from Board meetings, which is also deemed to be personal travel under relevant SEC regulations.

93. Under these circumstances, because all nine Director Defendants currently on the Board have reaped, and continue to reap, significant financial benefits from personal use of the Company's Aircraft, the Director Defendants are incapable of considering claims which allege that shareholders were misled as to the true cost of the Aircraft personal use, and that the personal use was wasteful.

## **II. THE DIRECTOR DEFENDANTS FACE A SUBSTANTIAL LIKELIHOOD OF LIABILITY FOR BREACHING THEIR DUTY OF LOYALTY IN CONNECTION WITH PERSONAL USE OF THE AIRCRAFT, AND FOR COMMITTING CORPORATE WASTE**

94. The Director Defendants currently on the Board cannot consider a demand to bring the claims asserted in this action because those claims are asserted against the Director Defendants themselves, and the Director Defendants thus face a substantial likelihood of liability.

95. Specifically, as alleged above, from 2008 through 2012, each of the Director Defendants disseminated proxy statements that intentionally and deliberately misled Chesapeake's shareholders as to the true extent and the true cost of personal use of the Company's Aircraft. The Director Defendants repeatedly assured shareholders that personal use was "limited" and that the Aircraft was "primarily used for business purposes", when in fact the Director Defendants had access to the Company's internal documents showing that personal use comprised between [REDACTED] of total Aircraft use. Each of the Director Defendants further misled Chesapeake's shareholders by using these false characterizations to justify the exclusion

of the fixed costs of the Aircraft when calculating the cost of personal travel. In this manner, the Director Defendants succeeded in under-reporting the cost of personal travel by millions of dollars every year.

96. In addition, the Compensation Committee Defendants (Eisbrenner, Keating, Maxwell and Whittemore) committed corporate waste in approving lucrative personal travel on the Aircraft when this perk produced no economic benefit to the Company. Similarly, the entire Board was responsible for approving director compensation, and thus also committed corporate waste in approving the generous personal Aircraft use for the Company's directors.

97. Finally, each of the Director Defendants on the current Board was personally and unjustly enriched through the under-reporting of personal travel. The Director Defendants' personal travel was under-reported because of the failure to include the fixed costs of Chesapeake's Aircraft, and also because the Director Defendants' flights to and from Board meetings were incorrectly classified as business flights, when in fact they were personal flights. Thus, the Director Defendants face liability for unjust enrichment and disgorgement.

98. For all of these reasons, the Director Defendants face a substantial likelihood of liability and cannot be expected to be able to consider in a disinterested and impartial manner any demand to assert the claims in this action.

### **III. CERTAIN OF THE NON-EMPLOYEE DIRECTOR DEFENDANTS HAVE EXTENSIVE BUSINESS AND OTHER RELATIONSHIPS WITH CHESAPEAKE.**

99. Certain Director Defendants on the current Board are further incapable of impartially considering a demand to assert the claims in this action because these Director Defendants have valuable business and other relationships with Chesapeake.



100. Director Defendant Keating became a director in June 2003. Subsequently, Keating's son, Chip Keating, and daughter-in-law, Brittney Keating, were both hired by Chesapeake. From August 2008 until March 2010, Chip Keating served as a Manager of Real Estate Development for Chesapeake. Prior to that, he served as a Chesapeake Land Negotiator from January 2008 to August 2008 and as an Associate Landman from March 2007 to January 2008. Chip Keating's total cash compensation for 2008 was \$135,242. Brittney Keating has served as a Landman for Chesapeake since July 2005 and served as an Associate Landman from September 2004 to July 2005. Brittney Keating's total cash compensation for 2008 was \$139,327.

101. Director Defendant Miller is Chairman, President and CEO of National Oilwell Varco, Inc., a supplier of oilfield services, equipment and components to the worldwide oil and natural gas industry. Chesapeake has had a business relationship with National Oilwell Varco, Inc., and purchased oilfield equipment and services from the company in each of the years from 2005 through 2010.

102. Director Defendant Hargis is the President of Oklahoma State University, which received over \$1.2 million in contributions and athletic ticket purchases by Chesapeake in 2008 alone.

103. Because of these various relationships, Director Defendants Hargis, Keating and Miller are incapable of considering a demand to assert the claims in this action in a disinterested and independent manner. Because of the business and other relationships described above, these Director Defendants are beholden to Chesapeake and its executive officers, and would not want to disturb a lucrative perk awarded to the Company's executive officers.

#### **IV. THE DIRECTOR DEFENDANTS LACK INDEPENDENCE DUE TO THEIR EXTREMELY HIGH DIRECTOR COMPENSATION.**

104. The Director Defendants are also incapable of objectively and impartially considering a demand because their own extremely lavish compensation packages render the Director Defendants beholden to Chesapeake and its executive officers, especially Defendant McClendon.

105. In 2011, Chesapeake's non-employee directors were paid a total of \$4,798,467, or an average of \$533,163 per director. Similarly, from 2007 through 2010, each of Chesapeake's non-employee directors was paid an average of \$498,315, \$669,516, \$540,376 and \$526,895 respectively.

106. These amounts are extraordinarily large for what amounts to, essentially, part time service on Chesapeake's Board. For example, in 2011, Chesapeake's Board held only *four* meetings in-person. For their service, however, Chesapeake's Board received an average of \$526,895 per director, or  $2\frac{1}{2}$  times the median pay of directors at Fortune 500 companies. In 2008, the multiple was even higher. A 2009 study by Equilar that analyzed the compensation of board members for Fortune 500 companies reported 2008 median compensation of \$182,102. Thus, the average total compensation of a Chesapeake Board member during that same year was over  $3\frac{1}{2}$  times that of the median Fortune 500 company director.

107. These amounts are not only large compared to director compensation at other companies, they are also extremely large when viewed against the financial circumstances of the individual Director Defendants. For example, Defendant Director Hargis earns more compensation in his part time role as a director for Chesapeake than he does in his full time employment as President of Oklahoma State University ("OSU"). In 2008, Hargis earned

\$350,000 (not including a \$20,000 car allowance) as President of OSU, compared to the \$479,557 he earned as a director of Chesapeake.

108. Because of their outsized compensation packages, the Director Defendants are essentially employees or insiders, rather than independent directors. As a result, the Director Defendants are beholden to the Company and its executive officers, especially Defendant McClendon, and would not be willing to take any actions to jeopardize their lucrative director compensation and the prestige associated with their positions. The Director Defendants are thus incapable of independently and in good faith considering any demand to bring claims that would challenge a perk enjoyed by McClendon and numerous other executive officers.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION (Breach Of The Duty Of Loyalty – Asserted Against All Director Defendants)**

109. Plaintiff incorporates by reference and realleges each and every allegation above as though fully set forth herein.

110. The Director Defendants, as directors of the Company, owed the Company and its shareholders a fiduciary duty of loyalty. As alleged above, the Director Defendants breached this duty by repeatedly and intentionally misleading Chesapeake's shareholders about, among other things: (a) the size and real purpose of Chesapeake's Aircraft fleet; (b) the extent of use of the Aircraft for personal purposes; and (c) the true cost of personal use of the Aircraft.

111. By reason of the foregoing acts, practices and course of conduct, and as alleged herein, the Director Defendants have failed to exercise good faith and breached their duty of loyalty to Chesapeake and its shareholders.

112. As a direct and proximate result of the Director Defendants' breach of the fiduciary duty of loyalty, the Company has sustained, and will continue to sustain, substantial harm.

113. The Director Defendants are liable to Chesapeake for damages as a result of the acts alleged herein.

**SECOND CAUSE OF ACTION  
(Aiding And Abetting Breach Of The Duty Of Loyalty –  
Asserted Against All Director Defendants)**

114. Plaintiff incorporates by reference and realleges each and every allegation above as though fully set forth herein.

115. The Director Defendants, as directors of the Company, owed the Company and its shareholders a fiduciary duty of loyalty. As alleged in the First Cause of Action, the Director Defendants breached their fiduciary duty of loyalty to the Company and its shareholders.

116. In disseminating the proxy statements that contained misleading statements about the nature and purpose of Chesapeake's Aircraft, the amount of personal use of the Aircraft and the true cost of this personal use, the Director Defendants aided and abetted one another in their breach of fiduciary duty.

117. As a direct and proximate result of the Director Defendants' aiding and abetting one another's breach of fiduciary duty, the Company has sustained, and will continue to sustain substantial harm.

118. The Director Defendants are liable to Chesapeake for damages as a result of the acts alleged herein.

**THIRD CAUSE OF ACTION**  
**(Corporate Waste –**  
**Asserted Against All Director Defendants)**

119. Plaintiff incorporates by reference and realleges each and every allegation above as though fully set forth herein.

120. According to the Compensation Committee Charter, it is the role of the Compensation Committee to “establish and monitor the implementation of the Corporation’s compensation system.” Further, the Compensation Committee is required to “[r]eview, evaluate and approve all compensation of directors and executive officers, including salary adjustments, bonuses, stock awards, stock option grants, perquisites and other benefits.”

121. According to the 2011 Proxy, “[t]he Board analyzes its director compensation package on an annual basis at the Board’s meeting in March of each year. Adjustments to director compensation are subsequently considered and approved by the Board at its meeting in June. Cash compensation adjustments approved by the Board in June are effective July 1 and annual restricted stock awards to directors are approved by the Compensation Committee at its June meeting.”

122. In approving the Company’s extravagant Aircraft personal use policy, and in allotting generous personal use to the Company’s executive officers and directors, the Compensation Committee committed corporate waste because the grant of these perks conferred no, or disproportionately little, benefit on the Company. Similarly, Chesapeake’s full Board committed waste by approving director compensation that allowed for generous personal use of the Company’s Aircraft that conferred no, or disproportionately little, benefit on the Company.

123. As a result of the corporate waste alleged above, the Compensation Committee Defendants and each of the other Director Defendants is liable to the Company for damages.

**FOURTH CAUSE OF ACTION**  
**(Unjust Enrichment –**  
**Asserted Against All Director Defendants)**

124. Plaintiff incorporates by reference and realleges each and every allegation above as though fully set forth herein.

125. The Director Defendants availed themselves of personal use of the Company's Aircraft, under circumstances where the true cost of this personal use was much greater than disclosed in the Company's proxy statements. The true cost of the Director Defendants' personal use was actually higher than disclosed because, contrary to the Director Defendants' statements, personal use comprised a major proportion of total use, and so the fixed costs of the Aircraft should have been allocated to the Director Defendants' personal use. In addition, the true cost of the Director Defendants' personal use was actually higher than disclosed because the Director Defendants misclassified their flights to and from Company Board meetings as business flights, when in fact these flights were perks and should have been classified as personal use.

126. As a direct and proximate result of the acts alleged herein, the Director Defendants wrongfully deprived the Company of substantial wealth and unjustly enriched themselves.

127. The Director Defendants are liable to the Company as a result and should be required to disgorge their unjust gains and return them to the Company.

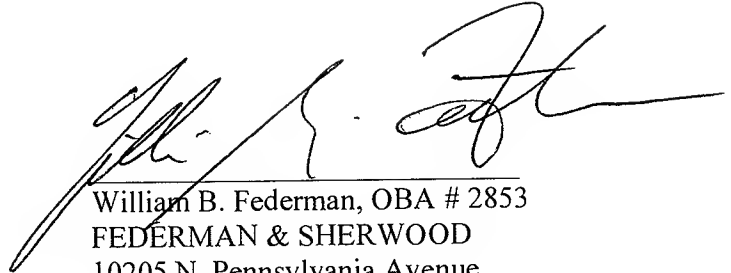
### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment as follows:

- (a) Declaring Plaintiff to be a proper derivative representative of Chesapeake;
- (b) Declaring that making a demand upon the Chesapeake Board is excused;
- (c) Awarding to the Company money damages against all Director Defendants, jointly and severally, for all losses and damages suffered as a result of the acts and transactions complained of herein;
- (d) Awarding to the Company restitution from the Director Defendants and ordering disgorgement of all benefits and other compensation obtained by the Director Defendants through personal use of the Aircraft that was not accurately reported in the Company's proxy statements;
- (e) An Order granting appropriate equitable relief to remedy Defendants' wrongdoing;
- (f) Awarding punitive damages against the Director Defendants;
- (g) Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- (h) Granting such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all claims so triable.



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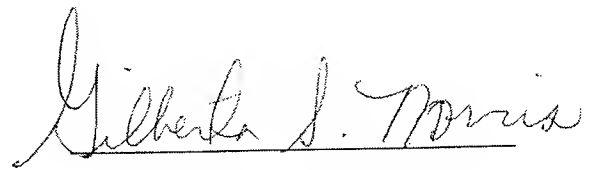
*Counsel for Plaintiff Gilberta S. Norris*



VERIFICATION OF GILBERTA S. NORRIS

STATE OF VIRGINIA                     )  
  ) ss.  
COUNTY OF NORTHAMPTON        )


I, GILBERTA S. NORRIS, of 3433 Willis Wharf Road, Exmore, Virginia 23350-0085, being duly sworn, depose and say that I have read the foregoing Verified Shareholder Derivative Petition, and the factual statements contained therein are true to the best of my knowledge, information and belief. I make this Verification subject to the penalty of perjury under the laws of the State of Oklahoma.



GILBERTA S. NORRIS

Sworn to and subscribed before me on:

April 30<sup>th</sup>, 2012

  
\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF VIRGINIA

